IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9542 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1&2 YES : 2 to 5 : NO

AHMEDBHAI LALBHAI MALEK

Versus

MANAGING DIRECTOR GSRTC

Appearance:

MR JS BRAHMBHATT for Petitioner

MR PRANAV G DESAI for Respondent No. 1

MR DA BAMBHANIA for Respondent No. 4

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 05/12/97

ORAL JUDGEMENT

Petitioner has approached this Court in exercise

of its extra-ordinary jurisdiction, in the circumstances noticed hereafter.

Petitioner joined the respondent - Gujarat State Road Transport Corporation {hereinafter referred to as "the Corporation"} as Conductor in 1970. On 2-4-1994, while he was on duty en-route from Jagadia to Ankleshwar, there was a Checking and as per the allegations of the respondent Corporation, petitioner was found carrying some passengers without ticket and, some passengers, to whom after charging amount of tickets were not issued. After holding inquiry, services of petitioner were terminated by order dated 29th October, 1994. At the time when order of dismissal was made, some proceedings were pending in respect of industrial dispute before the Conciliation Officer. The misconduct for which respondents sought to dismiss the petitioner was not connected with that dispute. After making dismissal order, the Corporation applied for approval of the action taken by it stating that they have paid the wages for one month. The payment of wages for one month and application for approving the action taken by the Corporation dismissing the workman, made in accordance with law, makes the order accord with proviso to Section 33 (2)(b) of the Industrial Dispute Act, 1947.

The workman on receiving the notice of application under Section 33 (2)(b), filed a reply thereto on 21st November, 1994. The petitioner alleged in his reply that the departmental inquiry against him was not in accordance with the fair procedure and as required under the relevant service rules and he also raised objection that the employer has not paid one month wages as required to be paid under Section 33 (2)(b). He also furnished in his reply details of short payment alleged to have been made to him of the one month wages required to be made.

After receiving the reply and hearing the parties, the impugned order approving the action taken by respondent-Corporation came to be made by the Assistant Labour Commissioner, Bharuch. It would be appropriate for appreciating the controversy raised in this petition to reproduce the order in full, which is short one :-

xQk.2/2/'95.

xgwbm. xVm.xDr.xfikfNk,
xiZkTkU xCTlDkbm, xYbnH xiZDwh,
xClUwNiwLwbmad xNmiwVnL xCrDwL,1947 xUm xDdZ 33(2)xUm
xCrVwbnfd.

xVwbQlgwbm,
xflYkFma xUlakZDgwbm,
xCri.xLm. xYudkf, xYbnH.

xCbJSkb

xflYkFma xUlaZDgwbm, xCri.xLm.xYudkf, xYbnHCr
xQk.29/10/'94 xUk xbuJ xgwbm xCrjZSYkCl xdkdYkCl xZdrDUr
xQrZPr xDbrdk xFrbfQsxPnBD xXkXQ xQrZUr xXbQbW xDbfk
xZkLrUm xZrUrJZrUwLUk xUlPsxaUm xXjkdm xCkVfk xZkLr xCk
xDHrbm xiZDwh xCvSwauFmD xflfkS xCTlUlaZ 1947 xUm xDdZ
33(2) xUmHr xCbJm xDbrdm.

xCk xiBiwRkUk xDkZSkb xQrUm xZkBFPm xCUr xiZkTkU
xCUr xiZkTkUUm xDkasxfkjmZkB xHkdn xjufkRm xQr xSbZwakU
xgwbm xCrjZSYkCl xdkdYkCl xZdrDUr xUuDbmZkBRm xXbQbW
xDbfkUnB xVFdnB xZrUrJZrUwL xCk xCrVwbnfd xCbJm xgwbm
xCrjZSYkCl xdkdYkCl xZdrDUr xQk.15/9/'94xUk xbuJ xguDuK
xUuLmi xCkVm xZrUrJZrUwL xQrZUm xikZr xUmHr xVwbZkPr
xCkDwhrVu xZnDrdk...

xLmDmLZkB xFrbbmQm xCkHbP xDbfk.

xCnVbuDwQ xCkDwhrVu xCBFr xgwbm xCrjZSYkCl xdkdYkCl xZdrD
xikZr xQVki xjkR xTbfkZkB xCkfm xjQm. xgwbm xCrjZSYkCl
xdkdYkCl xZdrDUr xXHkfUm xQD xCkVfkZkB xCkfm xjQm.
xCnVbuDwQ xCbJmZkB xVDwhDkbuUr xQk.23/1/'95 xUk xbuJ
xikBYefk xZkLr xXudkfwak xjQkB. xgwbm xCrjZSYkCl xdkdYkCl
xZdrDUr xQrZUnB xUlfrSU xbJn xDbfkUnB xJPkfwanB xjQnB.
xQrZPr xQrZUk xanUlaU xZkbWQr xdrEmQ xflFQu xTwakUZkB
xdrQkB xZrUrJZrUwLr xQrZUk xgwbm xCrjZSYkCl xdkdYkCl
xZdrDUr xXbQbW xDbfk xXkXQZkB xdrfk xTkbrdk xUlPsxaUr
xCkRm xCvSwauFlD xflfkS xCnViwRlQ xDbfkUm xjDwDUr xXkT xU
xCkfr xQr xgbQr xXjkdm xCkVfkZkB xCkfr xIr.

(xijm) (xCfkHwa)
xUDd xbfkUk xgwbm xCrjZSYkCl xdkdYkCl xZdrD.,
xQbikdm,
xZn.xVu.xYkduS, xQk.xKFNmak.
xJl. xYbnH.

Learned counsel for petitioner urges that the
impugned order approving the action taken by Corporation
by the Assistant Labour Commissioner suffers from patent

breach of principles of natural justice. The order neither takes notice of contentions raised by petitioner in his written reply to the show-cause notice against prayer of approval to the dismissal order made by the respondent Corporation nor does it give any reasons for granting the approval. As the proceedings for according approval is required to be completed, after affording an opportunity of hearing, as the proceedings are quasi-judicial in nature and as the final order made on application vitally affects the rights of petitioner adversely, the order was required to be made in consonance with the principles of natural justice. Such orders are required to be speaking order as the natural concomitent of fair procedure required of authority to adhere to principles of natural justice in deciding the rights of parties. The order falls short of this requirement and is void.

The learned counsel for respondent urges that the order of termination, discharge or dismissal does not become inoperative or ineffective merely because approval is not granted or is withdrawn or application is not made. He contended that there is a vital difference between the scheme of sub-Section (1) and sub-Section (2) of Section 33. While under sub-Section (1) of Section 33, seeking approval of the Competent Officer is a pre-condition before an order of dismissal or discharge or termination can be made, under sub-Section (2), application for approval is to be made only after the order has been made. In other words, the requirement of making an application itself under sub-Section 2 (b) of Section 33 is not a condition precedent of making the order but is requirement subsequent to making an order. The order of termination, discharge or dismissal, in the latter case, becomes operative as soon as it is made, and refusal or grant of approval does not affect the operation of order. The remedy of aggrieved party is to approach Industrial Tribunal under Section 33A of the I.D Act or under Section 10 of the Act against the wrongful order of granting or refusing approval. He drew support for this contention from the provision of Section 33 and 33-A as well as from the decision of the Supreme Court in M/s. Punjab Beverages Private Limited, Chandigarh v. Suresh Chand AIR 1978 SC 995.

It will be appropriate to reproduce Section 33 for considering the controversy.

33. Conditions of service, etc. to remain unchanged under certain circumstances during

pendency of proceedings -

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceedings before "an arbitrator" (a) or Labour Court or a Tribunal or National Tribunal in respect of an industrial dispute, no employer shall, -

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings, or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute, "or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman",

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceedings; or

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman :

Provided that no such workman shall be

discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

The aforesaid provision is in contrast with the provision of sub-Section (1) of Section 33 which requires that during the pendency of any conciliation proceeding before a Conciliation Officer or a Board or of any proceeding before an Arbitrator, Labour Court or Tribunal in respect of an industrial dispute, the employer shall not discharge or punish, by way of dismissal or otherwise, any workman for any misconduct connected with the dispute, save with the express permission in writing of the authority before which the proceeding is pending. Sub-Section (2) on the other hand provide that during the pendency of any such proceeding; as has been referred to above, the employer may, in accordance with the Standing Orders applicable to the workman concerned in such dispute or in accordance with the terms of contract, where no such standing orders are applicable, discharge or punish, whether by dismissal or otherwise, that workman for any misconduct not connected with the dispute, provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. Thus, while in the former case, there is a prohibition against making an order of discharge or of punishment of the workman concerned in the dispute, if he is sought to be dismissed or discharged or punished, for the misconduct connected with the dispute, unless prior permission of the authority before whom such proceeding is pending, is obtained. In the latter case, it is statutorily permissible for an employer to take action for dismissing or otherwise imposing any other punishment on the workman where the misconduct for which action is to be taken, is not connected with the dispute. However, the condition subject to which an order can be made in such cases is that such a workman must have been paid wages for one month before action is taken and an application has been made by the employer to the authority before whom the proceeding is pending for approval of the action taken by the employer. There is a statutory requirement to make an order on such application after hearing the concerned parties which makes adherence to principles of natural justice in

deciding such application a statutory mandate. One thing further is clear that while payment of one month's wage is a condition precedent for such an order to come into being further requirement is only to make an application for approval, but the permission on that is not a condition of making an effective order. Thus, act of dismissal or punishment is envisaged to come in existence in the case governed by Sec. 33 (2) without there being an approval. There is no indication that it contemplates only a sterile order to come in existence. When the law envisages certain acts to be permissible at the hands of one party ordinarily it envisages effective acts and not still-born. In these circumstances, the order of discharge or punishment by way of dismissal or otherwise cannot be deemed to remain in abeyance untill application is decided. While there is no dispute or debate about the validity of such order coming into operation in case application for approval is granted, the serious issue is joined on the question where the application has not been granted.

It has been the case of learned counsel for petitioner that if application for approval is not granted, the order of discharge or dismissal or punishment in any other manner becomes inoperative on rejection of such an application or in absence of such application. He places reliance on The Straw Board Manufacturing Company Limited vs. Govind, 1962 SC 1500 and on S. Ganapathy & Ors. v. Air India & Anr., 1993 SC 2430. The learned counsel for respondent Mr. Desai on the other hand contended to the contrary and placed reliance on Punjab Beverages' case. (Supra).

The matter came up for consideration before a three Judge's Bench of the Hon'ble Supreme Court in The Straw Board Manufacturing Co. Ltd Saharanpur vs Govind AIR 1962 SC 1500. The circumstances in which the question about the interpretation of section 33 (2) (b) came up before the Court were that the appellant had dismissed the respondent on February 1,1960 for alleged wilful in-subordination. As, two disputes were pending between the appellant and its workmen, one before the Industrial Tribunal at Allahabad and the other before the Labour Court at Meerut, the appellant sent separate applications by post on the same day to the two authorities for approval the action taken. While the Tribunal at Allahabad approved of the action on March 22,1960, the Labour Court at Meerut on April 29,1960 refused to approve the action taken, though the order passed by the Tribunal at Allahabad already was brought to its notice. Moreover, the Labour Court pointed out

`that though ordinarily an application of the appellant therein should have been granted in these circumstances', it refused to approve the action of employer on the ground that application for approval has been made after the respondent had already been dismissed, and therefore, it held that application was not bona fide inspite of a finding in favour of the employer that there was no victimisation or unfair labour practice the part of the employer. The principal question before Their Lordships of the Supreme Court was whether the application for approval is required to be moved prior to issuing the dismissal or discharge order. This question was answered by the Apex
Court as under :-

"In this connection our attention was drawn to sec.33-A of the Act which gives a right to the employee to apply for redress in case an employer contravenes the provision of S.33 and there is no doubt that the proviso to S.33(2)(b) should be so interpreted as not to whittle down the protection provided by S.33-A. As we read the proviso, we are of opinion that it contemplates the three things mentioned therein namely,(i) dismissal or discharge, (ii) payment of wages and; (iii) making of an application for approval, to be simultaneous and to be part of the same transection, so that the employer when he takes action under S.33 (2) by dismissing or discharging an employee, should immediately pay him or offer to pay him wages for one month and also make an application to the tribunal for approval at the same time. When however, we say that the employer must take action simultaneously or immediately we do not mean that literally, for when two things are to be done, they cannot be done simultaneously but can only be done one after the other. What we mean is that the employer's conduct should show that the three things contemplated under the proviso, namely, (i) dismissal or discharge, (ii) payment of the wages, (iii) making of an application are part of the same transaction. If that is done, there will be no occassion to fear that the employee's right under S.33-A would be affected. The question whether the application was made as part of the same transaction or at the same time when the action was taken, should be a question of fact and will depend upon the circumstances of each case."

Before concluding, and while considering the question whether a prior application and securing a prior permission, as is required by Sec. 33 (1), is also to be read as part of requirement under Sec. 33 (2) (b), the Court opined:

"If the intention was that in view of the proviso the employer could not pass the order of dismissal or discharge without first obtaining the approval of the tribunal, we see no reason why the word in the proviso should not have been similar to those in sub-ss.(1) & (3), namely, that no workman shall be discharged or dismissed without the express permission in writing of the authority concerned. The change therefore in the language used in the proviso to sub-s.(2)(b) clearly shows, in our opinion, that the legislature intended that the employer would have the right to pass an order of discharge or dismissal subject to two conditions, namely, (i) payment of wages for one month and (ii) making of an application to the authority concerned for approval of the action taken. The use of the word " approval " also suggests that what has to be approved has already taken place , though some times approval may also be sought of a proposed action. But it seems to us in the context of the approval here is of something done, as otherwise, it would have been twice easy for the legislature to use the words "for approval of the action proposed to be taken" in the proviso. Further, sub-s.(5) also suggests when it uses the words "approval of the action taken" that some action has been taken and it is that action which the employer wants to be approved by his application. The difference between sub-sec.(1) and sub-sec.(2) is therefore that under sub-sec.(1) the employer proposes what he intends to do and asks for the express permission of the authority concerned to do it; in sub-sec. (2) the employer takes the action and merely asks for approval of the action taken from the authority concerned by his appalication. There can, therefore, be no doubt that sub-sec.(2)(b) read together with the proviso contemplates that the employer may pass an order of dismissal or discharge before obtaining the approval of the authority concerned and at the same time, make an application for approval of the action taken by him....."

At this stage, an apprehension was raised on the part of the workmen that if the tribunal refuses to approve the action already taken, then, the workmen may be left without any remedy. This apprehension was allayed by the Court by stating;

"xxx If the Tribunal does not approve of the action taken by the employer, the result would be that the action taken by him would fall and thereupon the workman would be deemed never to have been dismissed or discharged and would remain in service of the employer. In such a case, no specific provision as to reinstatement is necessary and by thevery fact of the tribunal not approving the action of the employer, the dismissal or discharge of the workman would be of no effect and the workman concerned would continue to be in service as if there never was l any dismissal or discharge by the employer. In that sense, the order of discharge or dismissal passed by the employer does not become final and conclusive until it is appraoved by the tribunal underS. 33(2)."

The Court did not lay down that the operation of order shall remain in abeyance. The very fact that the Court opined that in case approval is not accorded, the consequences will be that action will fall by deeming as if workman was never dismissed and deeming him to continue in service, suggests that Court envisaged that though order would become operative, it will attain finality only on order of approval. The decision does not support the contention that order does not become operative.

Thereafter, the matter again came up before another three Judges' Bench of the Hon'ble Supreme Court in Punjab Beverages v/s Suresh Chand, AIR 1978 SC 995. The question arose in the circumstances that the workman was dismissed on 23rd December 1974 after holding a regular inquiry by the employer. Since an industrial dispute was pending before the Industrial Tribunal, at Chandigarh, in view of the provisions contained in Sec. 33 (2)(b) of the Act, the employer immediately moved the Industrial Tribunal, for approval of the action taken by it. But, before final order could be made, the employer made an application for withdrawing the application and the application was dismissed as withdrawn. The workman

on treating the order of dismissal as inoperative, made an application to the labour court under sec. 33-C(2) for determination and payment of the amount of wages due to him from the date of suspension treating the order of dismissal to be void and treating himself to be continuing in service. The employer resisted the application under sec. 33-C(2), inter alia, on the ground that the application under Sec.33 (2)(b) having been withdrawn, the position was as if no application had been made at all with the result that though there was contravention of Sec. 33(2)(b), but such contravention did not render the order of dismissal void ab-intio and it was merely illegal and unless it was set aside in an appropriate proceedings under sec.33-A or in a reference under sec.10 of the I.D.Act, the labour court has no jurisdiction under S.33-C(2) to direct payment of wages to the workman. Directly the question that arose before Hon'ble Supreme Court was as to what is the effect of contravention of Section 33 (2)(b) on an order of dismissal passed by an employer in breach of it. Does it render the order of dismissal void and inoperative so that aggrieved workman can say that he continues to be in service and is entitled to receive wages from the employer ?

Court examined the issue in light of the scheme of various provisions contained in the Chapter VII of the I.D. Act providing for the requirement of the approval in cases of discharge or dismissal or other adverse orders during the pendency of the industrial disputes between the employer and the employees and the consequences flowing from contravention of such provisions, if any. The Court stated that :-

"It is well-settled rule of construction that no one section of a Statute should be read in isolation, but it should be construed with reference to the context and other provisions of the Statute, so as, as far as possible, to make a consistant enactment of the whole Statute.... The object of the legislature in enacting this section clearly appears to be to protect the workman concerned in the dispute which forms the subject matter of pending conciliation or adjudication proceedings against victimisation by the employer on account of his having raised the industrial dispute or his continuing the pending proceedings and to ensure that the pending proceedings are brought to an expeditious termination in a peaceful atmosphere, undisturbed

by any subsequent cause pending to further exacerbate the already strained relations between the employer and the workmen. But at the same time, it recognises that the occassions may arise then the employer may be justified in discharging or punishing by dismissal his employee and though it allows the employer to take such action subject to the condition that in the one case, before doing so, he must obtain the express permission in writing of the Tribunal before which the proceeding is pending and in the other he must immediately apply to the Tribunal for approval of the action taken by him. On what principles, however, is the Tribunal to act in granting or refusing permission or approval and what is the scope of inquiry before it when it is moved under this section ?"

Thereafter the Court, after referring to the earlier decisions of the Court in Atheston West & Company Limited v. Suti Mill Mazdoor Union, AIR 1953 Sc 241 : Lakshmi Devi Sugar Mills Limited v. Pt. Ram Sarup, AIR 1957 SC 82 and the Punjab National Bank Limited v. Its Workmen, AIR 1960 SC 160 stated :-

"6.. It will be seen that the only scope of the inquiry before the Tribunal exercising jurisdiction under S.33 is to decide whether the ban imposed on the employer by this section should be lifted or maintained by granting or refusing the permission or approval asked for by the employer. If the permission or approval is refused by the Tribunal, the employer would be precluded from discharging or punishing the workman by way of dismissal and the action of discharge or dismissal already taken would be void. But the reverse is not true for even if the permission or approval is granted, that would not validate the action of discharge or punishment by way of dismissal taken by the employer. The permission or approval would merely remove the ban so as to enable the employer to make an order of discharge or dismissal and thus avoid incurring the penalty under Sec. 31(1), but the validity of the order of discharge or dismissal would still be liable to be tested in a reference at the instance of the workmen under S.10.....

On construction of Sec. 33 about the effect on

an act of employer in breach of it, the Court approved the dictum of Coke in Lincoln College case (1595) 3 Co. Rep. 58 b), "the office of a good expositor of an Act of Parliament is to make construction of all parts together and not of one part only by itself" and "it is the most natural and genuine exposition of a statute to construe one part of a statute by another part of the same statute for that best expression the meaning of the makers" and opined :

> "This is the position which arises when the employer makes an application for permission or approval under S.33 and such permission or approval is granted or refused ....Section 33 in both its limbs undoubtedly uses language which is mandatory in terms and section 31(1) makes it penal for the employer to commit a breach of the provisions of S.33 and, therefore, if S.33 stood alone, it might lend itself to the construction that any action by way of discharge or dismissal taken against the workman would be void, if it is in contravention of S.33. But S.33 cannot be read in isolation, for, as we have already pointed out, the intention of the legislature has to be gathered not from one provision of the Statute, or another, but from the whole of the Statute. The exposition of the Statute has to be ex visceribus actus. We must, therefore, construe section 33 not as if it were standing alone and apart from the rest of the Act, but in the light of the next following section 33-A and if these two sections are read together, it is clear that the legislative intent was not to invalidate an order of discharge or dismissal passed in contravention of S.33, despite the mandatory language employed in the section and the penal provision encated in section 33(1)."

Thereafter the Court, after referring to the provisions of Section 33-A and a catena of decisions of the Supreme Court in The Automobile Products of India Ltd., vs Rukmaji Bala AIR 1955 SC 258, Equitable Coal Co. vs Algu Singh AIR 1958 SC 761 and the Punjab National Bank Ltd vs Its Workmen AIR 1960 SC 160, opined :

> "Therefore, we cannot accede to the argument that the inquiry under section 33A is confined only to the determination of the quelstion as to whether

the alleged contravention by the employer of the provisions of section 33 has been proved or not. It will therefore be seen that the first issue which is required to be decided in a complaint filed by an aggrieved workman under section 33A is whether the order of discharge ordismissal made by the employer is in contravention of S.33. xx xx xx if the contravention of S.33 is established, the next question would be whether the order of discharge or dismissal passed by the employer is justified on merits. The Tribunal would have to go into this question and decide whether on the merits, the order of discharge or dismissal passed by the employer is justified and if it is, the Tribunal would sustain the order, treating the breach of S.33 as a mere technical breach. Since in such a case the original order of discharge or dismissal would stand justified, it would not be open to the Tribunal, unless there are compelling circumstances, to make any substantial order of compensation in favour of workman.

xxx xxx this much is clear that mere contravention of S.33 by the employer will not entitle the workman to an order of reinstatement, because inquiry under S.33-A is not confined only to the determination of the question as to whether the employer has contravened S.33, but even if such contravention is proved, the Tribunal has to go further and deal also with the merits of the order of discharge or dismissal.

There can be no question of justification on merits of an order of discharge or dismissal which is found to be null and void. xx xx xx xxx

The very fact that even after the contravention of Section 33 is proved, the Tribunal is required to go into further question whether the order of discharge or dismissal passed by the employer is justified on the merits, clearly indicates that the order of discharge is not rendered void and inoperative by such contravention.

It is also significant to note that if the contravention of Sec. 33 were construed as having an invalidating effect on the order of discharge or dismissal, Section 33A would be rendered meaningless and futile, because in that event, the workman would invariably prefer to

make an application under Section 33C (2) for determination and payment of the wages due to him on the basis that he continues to be in service. If the workman files a complaint under Section 33A, he would not be entitled to succeed merely by showing that there is contravention of Section 33 and the question whether the order of discharge of dismissal is justified on the merits would be gone into by the Tribunal and if, on the merits, it is found to be justified, it would be sustained as valid despite contravention of Section 33, but if, on the other hand, instead of proceeding under Section 33-A, he makes an application under Section 33C (2), it would be enough for him to show contravention of Section 33 and he would then be entitled to claim wages on the basis that he continues in service. Another consequence which would arise on this interpretation would be that if the workman files a complaint under Section 33A, the employer would have an aopportunity of justifying the order of discharge or dismissal on merits, but if the workman proceeds under Section 33C (2), the employer would have no such opportunity. Whether the employer should be able to justify the order of discharge or dismissal on merits would depend upon what remedy is pursued by the workman, whether under Section 33A or under Section 33C (2). Such a highly anomalous result could never have been intended by the legislature. If such an interpretation were accepted, no workman would file a complaint under Section 33A, but he would always proceed under Section 33C(2) and Section 33A would be reduced to futility. It is, therefore, impossible to accept the argument that the contravention of Section 33 renders the order of discharge or dismissal void and inoperative and if that be so, the only remedy available to the workman for challenging order of discharge or dismissal is that provided under Section 33A, apart of course from the remedy under Section 10 and he cannot maintain an application under Section 33C(2) for determination and payment of wages that he continues to be in service. "

In Tata Iron & Steel Company v. Modak, AIR 1966 SC 380, the employer had terminated services of his workman while four industrial disputes were pending before the Industrial Tribunal. However, before the order could be made on that application, all the pending proceedings terminated in passing of the Awards and the

employer raised an objection about the applicability of Section 33 (2) (b). Thereafter, the Court was required to consider where as a result of the pendency of the industrial dispute between employer and employee, the employer is required to apply to the Tribunal for approval under Section 33 (2) (b), does such an application survives after main industrial dispute is decided and an award is pronounced on it. The Tribunal had answered against the employer and after considering the material before it, it was of the opinion that the Inquiry held by the employer `was a farce, a mere eye-wash, biased with pre-determined result, and the entirely malafide and not at all fair. As a result of this, conclusion the Tribunal refused to accord approval the order of discharge passed by the employer against the workman.

The Court on the issue before it held that the proceeding under Section 33 (2) (b) is an independent proceedings and though such proceeding is between the employer and his employee who is concerned with the main industrial dispute but it is nevertheless a proceeding between the two parties in respect of matter not covered by the said main dispute. The court therefore rejected the contention that a proceeding which validly commences by way of an application made by the employer under Section 33 (2)(b) should automatically come to an end because the main dispute in the meanwhile has been decided. However, in the course of considering the scope and ambit of operation of Section 33, the Court observed that "it is now well settled that the requirement of the provisions have to be satisfied by the employer on the basis that they form part of the same transaction, and stated generally, the employer must either pay or offer salary for one month to the employee before passing an order of discharge or dismissed, and must apply to the specified authority for approval of his action at the same time or within such reasonable time as therefore to form part of the same transaction. It is also settled that if approval is granted it takes effect from the date of order passed by the employer for approval was sought. If approval is not granted, the order of dismissal or discharge passed by the employer is wholly invalid or inoperative and the employee can legitimately claim to continue to be in employment of the employer notwithstanding the order passed by him dismissing him or discharing him. In other words, approval in the prescribed manner makes the order of discharge or dismissal effective in the absence of approval such an order is invalid and inoperative in law".

It would be seen that the question about immediate effect of order made on claim of conditions envisaged under provisio to Sec. 33 (2)(b) until such an application for approval were to be decided was neither raised nor decided. What the observation pointed out was the effect of order made an application under Sec. 33 (2)(b) one way or other. The Court nowhere said, nor countenanced anywhere that anytime before the order refusing approval is made, the workman can be deemed to continue to be in employement and claim wages for that period. Such deemed situation arises on refusal. Conversely it suggest until an order refusing the application is made the order remains in operation albeit attains finality only on approal being accorded.

Again, the question came up before Hon'ble Supreme Court in S. Ganpathy v. Air India 1993 SC 2430, AIR INDIA removed/dismissed three of its employees from service as a result of disciplinary. Proceedings not connected with the misconduct for which the employees were sought to be punished were pending before the National Industrial Tribunal at Bombay. In terms of proviso to Section 33 (2)(b) of the Act, three separate applications were moved before the Tribunal by the employer for its approval of action taken by the employer. The employer had paid to each of the employees one month's salary and wages, however, he has deducted Rs. 10 to 15/- on account of monthly payment of tax on employment under the provisions of West Bengal Sales Tax and Professional and Amenities Act, 1979. The workmen set up the defence that there has been short payment of salary or wages then required under proviso to Section 33 (2)(b). The objection as to invalidity of dismissal on account of short payment by 10 or 15 rupees was sustained by the Tribunal and approval was not accorded. Without going into merits of the question, the Bombay High Court in exercise of its extra-ordinary jurisdiction invoked by the workman reversed the decision of the Tribunal and remanded the matter back to the Tribunal for considering the same on merit by holding that the Tribunal was in error in refusing approval on the question of suggested short payment. However, the Court held about the deductibility of tax on employment to be justified by holding that the content and character of wage would extendidly tend to remain the same so far the subjection to statutory tax deduction is concerned being remuneration as understood under Section 2 (rr) of the Act on the supposition that the terms of employment, express or implied, were fulfilled and same was due as wages payable to the workman in respect of his employment or of work done in such employement even though he was not put to work" and on this finding upheld the order of

Bombay High Court reversing the decision of the Tribunal.

It is apparent that Court was concerned with the question of norm of computing one months wages to be paid on action having been taken. It was in that context that observations about the `order of termination to be incomplete until order of approval is made' emanated. In view of remand the approval application remain pended and inaction about the defacto or dejure opertation of order of discharge in the absence of approval during pendency of application so as to give the workman right to claim wages for that period did not arise nor asnwered by the Court. Nor the question about the affect of order of refusal on the applicability of provision of Section 33 C of the Act was directly before the Court as was in Punjab Beverages case.

The learned counsel for respondent vehemently urged that since Punjab Beverages Pvt. Limited case is a later decision of the Supreme Court and is not contrary to an earlier or later decision of larger Bench, binds this Court. In view of that the petitioner must have recourse to appropriate proceedings under Section 33A or Sec. 10 of the ID Act by challenging the order before the Tribunal. Moreover, in view of the settled position that on such reference under Sec. 33-A also the Tribunal is required to go into the merits of dismisal order and relief of reinstatement cannot be granted merely on finding the order to be in breach of conditions of Sec. 33, therefore, even if the impugned order according approval to the action taken by the employer is set-aside, and the order is remanded back to the Tribunal for deciding it on merit, it would not result in final culmination of the proceeding but the same result would follow inasmuch as the order of termination would remain in operation unless it is set-aside in appropriate proceeding under Section 33A or under Section 10 of the I.D Act, and the consideration by the Tribunal now whether to accord or not to accord the approval would be an additional proceeding without ending in fruitful result, the petitioner would, whether he is successful in the Tribunal or he fails, still have to be before the Tribunal for getting relief against the operation of dismissal or discharge order.

On the other hand, learned counsel for petitioner urged that order made in violation of provision to Section 33(2)(b) renders the order invalid from the inception and there being two earlier decisions of the Supreme Court, contrary to the decision in Punjab Beverages (Supra) case, which were not considered in

later decision, the earlier decision remains binding. He also made reference to a decision of the Supreme Court in 1994 (6) SCC 522 pointing out that there being conflicting decision of the Supreme Court in this regard, the issue in that regard has been referred to the Constitution Bench after noticing aforesaid four decisions.

From the aforesaid review of various decisions of the Supreme Court, it is apparent that conflicting views as to the effect of non-approval of the act of the employer in discharging or dismissing an employee in breach of condition of Section 33, whether such a breach makes the order void and inoperative from the inception; or the order remains in operation subject to determination of its validity in appropriate proceedings under Section 33 A or Section 10 of ID Act. The conflict received attention of the Apex Court in Jaipur Zilla Sahakari Bhoomi Vikas Bank Limited v. Ramgoal Sharma & Anr., (1994) 6 SCC 522 and the issue has been referred to Constitution Bench for decision. However, so far said conflict has not been resolved.

Law appears to be settled that in case of conflict between decisions of the Supreme Court itself, the latest prouncement which will be bhinding upon inferior courts unless the earlier was of a larger bench and the same has not been considered by the later decision.

As per a Full Bench decision of this Court in Gujarat Housing Board v. Nagjibhai Laxmanbhai, (1985) 2 GLR 1190, "when there are two conflicting decisions of Supreme Court consisting of equal number of judges, the later of the two decisions should be followed by the High Court or other Courts".

In Muttalal v. Radhe Lal, AIR 1974 SC 1597, Hon'ble Supreme Court adopted practice to follow the former decision of the Larger Bench than the latter decision of a Small Bench finding that there was a conflict between the two. The same principle was adhered to by the Supreme Court in The State of U.P v. Ramchandra Trivedi, AIR 1976 SC 2547.

If aforesaid principles are kept in view, which are binding on this Court, there being conflict between decisions of Supreme Court viz., AIR 1962 SC 1500 and AIR 1966 SC 380 on the one hand; and opinion expressed in AIR 1978 SC 995 on the other hand, coming from the Benches of equal strength on the issue of the effect of refusal to

accord approval on the operative nature of dismissal or discharge order, for the High Courts or other Courts and Tribunals subordinate to it, the latest decision amongst these remains the binding precedent. As between the decision in Punjab Beverages case and Ganpati's case though being latter in point of time, being from a Bench of smaller strength not after considering the decision in Punjab Beverages' case, the other Courts in India would be bound by Punjab Beverages's case.

However, this conflict on which considerable contention had been made should not in my opinion come in the way of deciding this petition inasmuch as so far as issue raised in this petition is concerned, there does not appear to be any conflict. It may be noticed that in all the decisions referred to above, the Court was considering the impact of refusal or there being want of approval to the action taken by the employer discharging or dismissing its employee, on the validity or operation of the order of dismissal or discharge. For that matter, the conflicting decision is in respect of how far an order made in breach of the conditions provided under Section 33 remains effective or a dead letter. There is no conflict of opinion about the question that once condition of making an order of dismissal or discharge or imposing other punishments under Section 33 is fulfilled, the order becomes operative; and that inspite of order being operative, the workman does not lose his right to challenge that order on various grounds. In such cases, such order of punishment can only be challenged by way of reference under Section 33A or Sec. 10 as the case may be, in which proceedings order of punishment will not go merely on the ground of breach of conditions of Sec. 33, but will be sustained or set-aside on the merit of its standing. Here is not a case where the Tribunal before whom the proceedings were pending has refused to accord approval. According to applicant-employer, he has paid one month's wages and the Tribunal has accorded approval on an application having been made to it seeking approval after order of discharge has been made. The order which at best, in view of above conflict, would have failed and become inoperative on refusal to grant approval by the Tribunal before whom proceedings were pending. The Courts are unanimous that the order on compliance of the conditions of Section 33 (1) or Section 33 (2)(b) becomes complete and operative. Even in the case of Straw Products, relied on by the learned counsel for respondent in that regard, the Supreme Court has said that once approval is accorded, the order becomes effective with effect from the date on which the order is made and there is no hitus between the date of order and its coming into

operation. It has also been held in Ganpathi's case that defective order becomes operative in the case of circumstances ennumerated under Section 33 (2)(b) on making of the application though its operation takes effect only on approval having been accorded with effect from the date of making of the order. Present case is where employer claims to have made an order of dismissal after paying one month's wages as required under Section 33 (2)(b) and has promptly moved an application seeking approval of the order, and the approval has in fact been accorded. The order as per the Apex Court's decision becomes defacto effective on the date of the making and also become dejure effective w.e.f the same date when it was accorded the approval. The question is as to remedy of the aggrieved party on coming into operation of such order of dismissal or discharge both defacto as well as dejure. While learned counsel for petitioner urges that it being an order which is required to be made by the Competent Officer in a proceedings which are quasi-judicial, it ought to be a speaking order and as the order fails to conform to that norm, the order must be quashed and the Competent Officer be directed to decide the question of according approval afresh, in accordance with law. In this connection, it may be noticed that it is not a case where the applicant has alleged non-payment of one month's salary. What he alleges that the payment falls short of the computation of wages or salary required to be paid for one month. For the purpose of computing one month salary or wages, there is a dispute. There is dispute raised by the employer also that in fact the Company has paid more than what was due as one month's wages. Therefore, details of computation given by either party by itself would not be sufficient indication to decide the issue about short payment or full payment, required to be made under the provisions of Section 33 (2)(b). Allegations of error or defect in the order granting approval gives remedy to aggrieved party but does not stop the order from becoming complete and operative. Relief in such circumstances will flow from the remedy to be persued under statute.

The questions, which requires consideration is if the Court agrees with the contention of the learned counsel for the petitioner that order, which is required to be a speaking order, is a non-speaking order, whether the Court should exercise its jurisdiction under Article 226 of the Constitution to quash and set-aside that order and remand the case back to the authority concerned for deciding the issue or according or not according approval to the action of the employer by the Competent Officer afresh, or affected party by the alleged wrongful accord

of approval be left to prosecute remedies prescribed under the Statute for redressel of such grievance. The learned counsel for petitioner has placed reliance on a Full Bench decision of this Court in The Testeels Limited vs. N.M Desai, reported in 1969 GLR 622, as affirmed by the Supreme Court in N.M Desai v. The Testeels Limited & Anr., AIR 1980 SC 2124.

The learned counsel for respondent on the other hand contended that in view of decision in Punjab Beverages' case, once an order becomes operative, the only remedy available for the petitioners was to avail of lodging complaint under Section 33 A for the breach of condition of Section 33 (2)(b) or to raise an industrial dispute under Section 10 of the I.D. Act.

It is true that ordinarily if the Court finds that there was a duty on the concerned authority to make a speaking order and the order is made without recording of reasons, the order must fail. In the present case, that criterion is satisfied inasmuch as petitioner has demonstratively made it clear that he had raised objection about non-compliance with the first condition of making order of discharge or dismissal namely that he has been paid less than one month's wages prior to discharge order before the specified authority seized of proceedings under Sec. 33 (2)(b). The fact which has not been disputed by the employer, and the impugned order approving the action of the respondent employer is conspiciously silent on the merit of this objection. In fact, neither conclusion has been recorded nor reason in support of such conclusion, even if it is impliedly taken to have been decided, finds place in the order. It cannot be gainsaid that while considering the application for recording approval, the authority concerned has to apply his mind not to the merit of decision taken by the employer but he has to consider whether prima facie decision has been taken by the employer for the discharge of employee in question in a fair manner, and whether the employer's decision to dismiss the respondent was bona fide or was it an outcome of any unfair labour practice or victimisation ? The inquiry in these two questions is limited to the extent whether a prima facie case has been made out or not. He is also required to consider whether other conditions necessary for making the order, as required by the statutory provisions, under which any restriction on making such order has been made, have been complied with or not. Though at one point of time, Mr. Desai, learned counsel for respondent argued, relying upon observations in Testeels Limited v. N.M Desai, 1969 GLR (Vol.10) 622, that "Now where an application is made

by the employer for the requisite aproval under Sec. 33 (2)(b) what the conciliation officer would have to consider is whether a prima facie case has been made out by the employer for discharge of the employee in question. If the employer has held a proper inquiry into the alleged misconduct of the employee and if it does not appear that the proposed discharge of the employee aounts to victimisation or unfair labour practice, the conciliation officer would have to limit his inquiry only to the question whether a prima facie case has been made our or not. If he comes to the conclusion that a prima facie case is made out, he would have to grant approval to the employer. He would not be concerned, to inquire as to what would be the effect of his order upon industrial peace between the employer and the employees, nor would he be guided in making the order by the merits of the industrial dispute pending conciliation before him. However, this contention of Mr. Desai does not commend itself."

The Full Bench has held that every Administrative Officer exercising quasi-judicial functions is bound to give reasons in support of the order he makes, and therfore, is bound to make a speaking order. The Court quoted from Jaswant Sugar Mills's case, AIR 1963 SC 677 that the quasi-judicial decision involves the following three elements :

(1) It is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;

(2) it declares rights or imposes upon parties obligations affecting their civil rights; and

(3) the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of material if a dispute be on question of fact, and if the dispute be on question of law, on the presentation of legal argument, and a decision resulting in the disposal of the matter on finding based upon those questions of law and fact.

Applying these tests, it is apparent that the procedure required for making an order of dismissal or

discharge or other punishment in respect of a misconduct not connected with the pending proceeding under I.D Act is that before discharge or dismisaal order, the workman must have been paid wages for one month and simultaneously or within reasonable time to make it a part of the same transaction, the employer must have made an application before the concerned Authority before whom proceedings are pending an application seeking approval of the action taken by him. Making of an application fulfils the second criterion. The first criteria namely payment of one month's wages before discharge or dismissal order is made is question of fact on the basis of which application for seeking approval is founded and where the concerned workman objects to the correctness of such fact, it becomes a dispute on the question of fact, to be investigated and determined by the concerned officer making quasi-judicial decision. Whether the condition required before making application has been fulfilled or not for making a discharge or dismissal order, in our mind is necessary part of the investigation to be undertaken by the Authority concerned for a dispute as to statutory compliance necessary for making the order has been raised before according sanction.

I am well fortified in aforesaid conclusion by a decision of the Supreme Court in this regard in the case of Messrs. Podar Mills Limited v. Bhagwan Singh & Anr., AIR 1973 SC 2224. The Supreme Court held that in absence of any statutory proof as to the payment of one months' wages to the dismissed employee, approval cannot be accorded. Again in Lalla Ram v. Management of DCM Chemical Works Limited & Anr., 1978 SC 1004, Hon'ble Supreme Court after referring to its earlier decision held that in the proceedings under Section 33 (2)(b) of the Act decision of the Industrial dispute is confined to the inquiry to the following five matters; viz., (i) Whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee, regard being had to the position settled by the Suprme Court that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn

from the imposition of unduly harsh, severe, unconscionable or shockingly disappropriate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal.

These two decisions puts it beyond the pail of doubt that the concerned authority before according approval must consider where there is a dispute as to the factum of the payment of one month's wages whether the employer has paid or offered to pay wages for one month to the employee before discharge or dismissal order is made. This is apparent from the impugned order itself that inspite of a dispute having been raised about compliance of this condition, the concerned Authority has not considered this aspect of the matter in his order at all, nor has it reached any finding thereon. The order suffers from the vice of being a non-speaking order.

However, further question that arises for consideration is what can be proper course adopted in such matters, in such circumstances. As I have said earlier, that ordinarily the order must fall without further inquiry. However, another question which has been raised by Mr. Desai that quashing of an order would be of acamdeic importance in the present circumstances in view of the binding decision of Supreme Court about the alternative remedy available to the petitioner and scope of inquiry in such alternative remedy to go into the merits of punishment order on being persued.

It may be noticed that in Testeel Limited also, this question was raised before the Full Bench of this Court, however, the same was not answered, though in slightly different colour. The Court noticed that, " We may point out that an argument was sought to be advanced on behalf of second respondent that even if the conciliation officer was bound to give reasons in support of the order, failure to give reasons did not invalidate the order so as to render it liable to be quashed and set-aside but this Court could in the exercise of its jurisdiction under Article 226 compel the conciliation officer by a mandamus to give reasons in support of the order and then proceed to examine whether the order was

required to be quashed by certiorari. But we did not allow this argument to be raised before us because sitting as a Full Bench we are concerned only with the question referred to us by the Division Bench and we cannot allow any party to extend the scope and ambit of the controversy beyond that set out of the question referred to us."

In the first flush, the contention of Mr. Desai appears to have some substance. There is no conflict of opinion on the issue that the order of dismissal or discharge, once approval is accorded becomes operative with effect from the date it is made. In this present case, approval has in fact been accorded and it has become operative. The aggrieved party having any grievance as to breach of condition of Section 33, he can lodge a complaint under Section 33A before the Industrial Tribunal or the Labour Court as the case may be. He has also remedy to challenge that order by seeking Reference under Section 10 challening the order of dismissal on merit. There is also no dispute on the issue that on a complaint being made under Sec. 33A before the Arbitrator, Labour Court or Industrial Tribunal, as the case may be, it shall adjudicate upon a complaint as if it is a dispute referred to it in accordance with the provisions of the Act. It also requires the Tribunal to submit its award to the appropriate Government and the provisions of the Act shall apply to the said Award accordingly. Law is also trite that Complaint under Section 33-A of the Act is as good as a Reference under Sec. 10 of the ID Act and the Tribunal has all powers to deal with, as it would have in dealing with the dispute arising out of dismissal of an aggrieved workman on a reference under Sec. 10. As held by the Supreme Court in M/s. Kamarhatty Co. Limited v. Ushnath Pakrashi, AIR 1959 SC 1399. The same view was reiterated by the Supreme Court in Punjab Beverages case while considering criterion of the inquiry under Section 33-A it said, "mere contravention of Sec. 33 by the employer will not entitle the workman to an order of reinstatement, because inquiry under Sec. 33-A is not confined only to the determination of the question as to whetehr the employer has contravened Sec. 33, but even if such contravention is proved, the Tribunal has to go further and deal with the merits of the order of discharge or dismissal."

Thus from the aforesaid, it is clear that the question as to ultimate merit of the dismissal or discharge order becomes subject matter of determination before an employee can be reinstated after order has been made ostensibly after complying with the provision of

Sec. 33, even in case where a workman complains of non compliance of one of other conditions of Sec. 33 depends upon the final order on merit of the dismissal or discharge order made by the Tribunal; whether under Sec. 33-A or under Section. 10 of the I.D. Act. And if that be the result, then merely by asking Conciliating Officer to re-decide the question of according approval would be an academic exercise.

The contention of learned advocate for petitioner that once approval has been accorded, he does not have remedy to approach Tribunal under Section 33-A of the Act is devoid of substance. The fact that approval has been accorded does not preclude the aggrieved workman to lodge a complaint that in fact there has been breach of any one or more condition of Sec. 33 in making the order, Whether in respect of non-payment or short payment of one month's wages before discharge to be computed in terms of Sec. 2 (rr) of the I.D Act or whether in respect of not making an application before concerned authority seeking its approval which can be considered as part of the same transaction. If he has right to make such a complaint in respect of order before approving authority, there is no reason to hold that he cannot lodge the same under Sec. 33-A. That is apart from the fact that right to approach under Sec. 10 of the Act in any case remains unimpaired.

However, in the present circumstances question under consideration is that in case the order is set-aside on the ground of it being a non-speaking order, the question of compliance or non-compliance, shall remain to be determined and the situation will be restored to use the expression in Ganpati's case `defacto order of termination having come into effect awaiting attaining finality `dejure' on the result of application for approval. If the approval is accorded, after recording finding against the objections raised by the workman undoubtedly his remedies would be to approach the Arbitrator, Labour Court or Tribunal, as the case may be under Sec. 33-A or under Sec. 10 of the ID Act. However, if the approval is not accorded, though as per the situation as it stands today, remedy of the petitioner would be same but one cannot lose sight of the further development that Apex Court finding the existing conflict about the operative nature of dismissal order in the absence of an approval order or non-fulfilment of condition precedent, has referred the issue to be resolved by a Constitutional Bench and the question as to which party ultimately has to resort to the proceedings under Sec. 33-A or under Sec. 10, and whether the workman can have reach to tribunal/labour court directly

under Sec. 33 (c)(2) in case of a dismissal order having come into existence in contravention of Sec. 33-A would depend upon the outcome of that reference. Keeping the order intact at this stage would seriously affect the right to and nature of remedies to be persued by petitioner in case order is found to be in contravention of the provisions of Sec. 33 (2). The present order is on the face of it suffers from vice of being non-speaking order, it would only be just and proper in the circumstances of the present case to quash the order according approval and direct the Conciliation Officer before whom proceedings were pending at the relevant time to decide the application for according approval to the respondent for their action in dismissing the petitioner workmen in accordance with law by making a speaking order relegating the parties to situation anterior to making of the impugned order at the stage of pending of proceeding under Section 33 (2)(b), and I do so direct accordingly.

In the result, this petition succeeds, in terms aforesaid. Rule made absolute accordingly. There shall be no order as to costs.

****

Prakash*